

Industry and ecologists attack Jersey 'clean property' law

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business no matter how small or large to escape the cleanup process.

Tightening or relaxing ECRA standards and closing all the loopholes are the bases of the lawsuits to be decided early next year in the Appellate Division of Superior Court in Trenton.

Industry and the environmentalists have filed their briefs with the court. The DEP will be filing its brief by the end of the month, Murray said.

Since ECRA took effect on Jan. 1, 1984, the rules governing cleanups have been modified twice. Those changes are now being attacked by the business community.

"ECRA has been widened to include all kinds of triggers which begin one's regulatory travail," explained Bruce Siminoff, a Califon businessman who chairs the ECRA Task Force for the Commerce & Industry Association of New Jersey, headquartered in Paramus.

"It is not just sales of property, as the law intended," Siminoff said. "Due to the ripples caused by the ECRA rock thrown in the economic pond, some of these now include mergers, borrowing money, going public, the sale of the interest by a minor general partner, death, re-renting premises to another tenant, moving to a location across the street, selling off adjacent open land and on and on."

The Commerce & Industry Association says that if companies do not move fast enough for the DEP, the fines and penalties can be severe.

"The levied fines can be punitive and heavy," Siminoff charged. "One industrial park in northern New Jersey was fined \$3 million for pollution probably done prior to the ownership of those who were fined."

The association contends that a lender, such as a bank or leasing company, could wind up picking up the tab for a cleanup even though it did not contaminate the property.

"Lenders become responsible for pollution they did not cause," Siminoff asserted. "For this reason, industry has been 'shut off' by banks and loans are only granted to large borrowers."

The association maintains that New Jersey companies are "terrified about the enormous police and fining

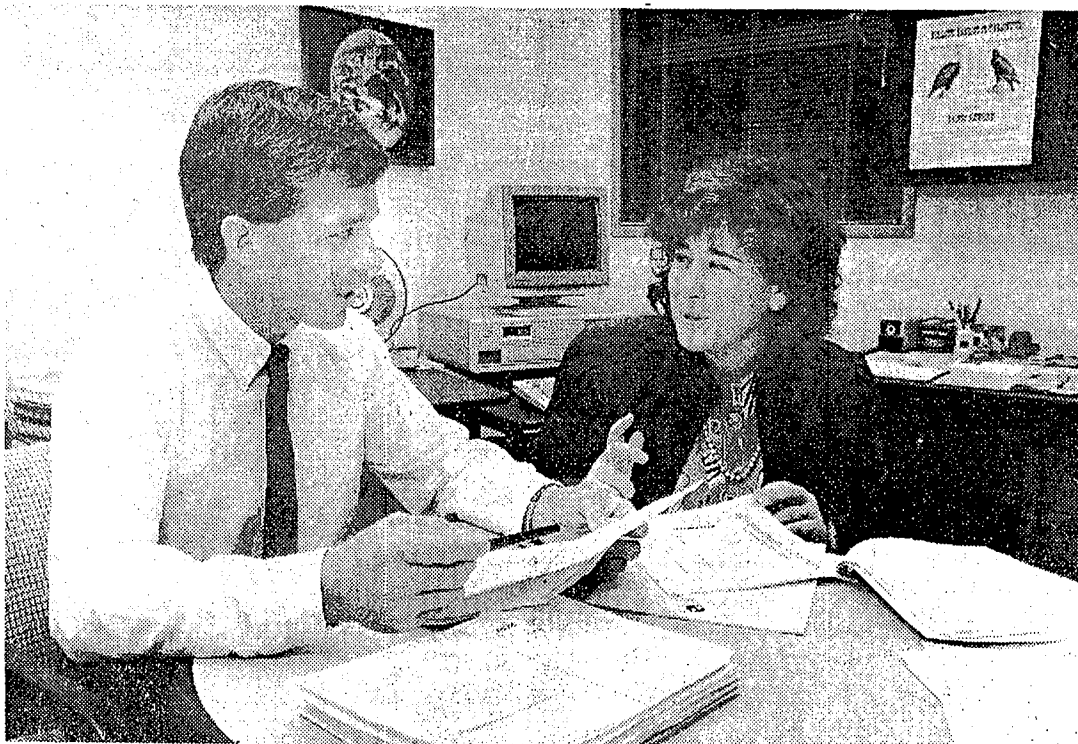


Photo by Gene Boyars

Barbara Murray, bureau chief of applicability and compliance for the DEP, reviews ECRA cleanup plans with her assistant, Karl Delaney, in her Trenton office

power assumed by the DEP," which can put a company out of business through these "unprecedented enforcement efforts."

One of the changes in the new amendments adopted Aug. 7 involves the definition of what constitutes ownership or control of an establishment, and thus a potential ECRA "trigger."

Previously, a company would have to seek ECRA approval if there were a transfer of 51 percent of its stock, or the stock of a parent corporation which owns the facility, according to the Environmental Practice Group of the New York law firm Lord, Day & Lord, Barrett Smith.

"Under the new regulations, a transfer of minority interest will trigger ECRA review if that is the controlling interest of the company or the corporate owner," the Group noted. "Thus,

it is possible that a chief executive officer holding less than 10 percent of the stock in a company could single-handedly trigger ECRA by selling his shares."

The issue of controlling interest is also of concern to lenders, said Larry Schnapf of the Environmental Practice Group.

"If a lender repossesses inventory or receivables of a company that has been assigned as collateral for a loan and the value exceeds 50 percent of the company's assets, an ECRA transaction could be triggered," Schnapf said.

ECRA has been the target of criticism since the Legislature decided to clean up the potentially hazardous legacies of more than a century of industrial development and to assure that the mistakes of the past are not repeated.

"Those seeking to settle in the Garden State know they will not be inheriting the toxic troubles of past generations," ECRA's Delaney emphasized. "No other state can offer new businesses such a contract of clean health protecting both the environment and the workers in these plants and offices."

Since its inception, ECRA has received more than 25,000 applications from businesses up for sale that are seeking to learn whether their operations and properties pose any threats to the land, air, water or on-site workers.

The number of applications filed with the ECRA office averaged about 6,000 annually in the past two years.

Of the 25,000 applications filed under the ECRA law as of Oct. 1, 5,500 have been determined to be applicable in terms of the ECRA criteria and regulations. These applications must then

go through the technical, frequently tedious and often expensive fact-finding ECRA process.

Of the 5,500 cases that were reviewed for potential problems, about 3,000 were given "negative declarations." That means there was no contamination found in the buildings and on the grounds, as well as beneath the surface, or if there was a problem, it was remedied immediately.

A "negative declaration" allows the owner to sell his property and get a "clean bill of health" certificate from ECRA.

Of the 2,500 cases in various stages of activity, 350 have had their cleanup plans approved and 230 are undergoing cleanups. Another 100 are in various enforcement proceedings, while 300 applications have been found to be deficient and require further information before a cleanup plan can be approved.

"The companies propose to us their cleanup plans and they can be as creative as they want as long as the contamination is removed and meets with our final approval," Delaney said.

The ECRA office, Delaney said, is providing an important public service to both the property owner and the community.

"The person who benefits pays for the program," Delaney stressed. "The seller who has gained from his business activity puts the property in fit condition for the buyer."

Businesses locating in any other state cannot be guaranteed that their investment is protected by such a comprehensive environmental-health protection law, Delaney said.

"Other states are looking at the New Jersey method of cleaning up the environment because they want to attract businesses that will not degrade the environment but improve the overall quality of life for everyone," Delaney said.

"You've got to start somewhere to correct these age-old problems. New Jersey decided to do it first because it had the most serious pollution problems to deal with—and delaying it year after year after year benefits no one," Delaney said.

He said it's now up to the courts to decide if what ECRA is doing is beneficial and lawful.

Industry, ecologists attack 'clean property' law

By GORDON BISHOP

The embattled state law requiring a "clean bill of health" for all commercial and industrial properties sold in New Jersey affects more than \$2 billion worth of real estate undergoing some form of decontamination, based on the more than 2,500 cases being processed by the Department of Environmental Protection (DEP).

Under attack by both industry and environmentalists, the Environmental Cleanup Responsibility Act (ECRA) has financially "terrified" New Jersey companies awaiting a time-consuming and costly transfer of property, according to many businesses caught in ECRA's bureaucratic pipeline.

Owners of 2,500 properties now awaiting disposition by the DEP have had to post more than \$750 million in assurance bonds to make certain the cleanups are completed in accordance with the nation's only such environmental law, the latest ECRA figures show.

On the up side of the economic-environmental controversy, ECRA has, since its adoption six years

Environmental rules called harsh, lenient

ago, taken care of some 3,000 polluted properties at a cost of more than \$170 million, according to ECRA Bureau Chief Barbara Murray.

Owners selling their properties must pay the entire cleanup cost, as well as the state fees needed to operate the ECRA office within the DEP. The ECRA budget for 1989 is \$6.5 million. There are 124 employees in the ECRA office.

Because no tax dollars support ECRA, the overhead is paid by fees charged to property owners. The fees range from \$200 to review an application to determine if a cleanup is needed, to more than \$10,000 for a multimillion-dollar cleanup of a major manufacturing site that can drag on for several years.

ECRA is the only state law in the nation that guarantees that commercial-industrial properties

sold since 1984 are not contaminated with chemicals and other pollutants, Murray said, defending the beleaguered statute from legal challenges by industry on one side and environmentalists on the other.

Assistant bureau chief Karl Delaney added, "We must be doing something right if both sides think we're doing something wrong. Industry thinks we're coming down too hard on how and what should be cleaned up, while the environmentalists feel we're not doing enough to enforce the law."

The complex ECRA statute has been the subject of litigation in the state courts the past two years.

Industry, led by the Chemical Industry Council of New Jersey, is suing the state over the ECRA rules adopted to implement the 1984 cleanup law. Industry contends they must be clarified and simplified to speed up the cleanup process, which now can take several years.

Environmentalists, led by the New Jersey Environmental Lobby, are suing because they want ECRA to go even further than it does by not allowing any

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